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19451
JUN 7 1995 11:15 AM
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June 7, 1995

New Recordation No.

Dear Mr. Williams:

On behalf of Industrial Investment Corporation, I submit for filing and recording under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, executed counterparts of a primary document, not previously recorded, entitled Railroad Equipment Lease ("Lease"), executed June 1, 1995.

The parties to the enclosed Lease are:

Industrial Investment Corporation
P.O. Box 706
Galion, Ohio 44833

— LESSOR

Railtex Service Company, Inc.
Suite 200 — 4040 Broadway
San Antonio, TX 78209

— LESSEE

The said Lease, among other things, acts to lease thirty-six (36) boxcars by the Lessor to the Lessee.

The equipment covered by the instant Lease is as identified in the Lease under old SOO and new SCRF numbers.

A short summary of the Lease to appear in the ICC Index is as follows:

"Covers 36 boxcars old SOO and new SCRF numbers."

Enclosed is a check in the amount of twenty-one dollars (\$21.00) in payment of the filing fee.

Once the filing has been made, please return to bearer the stamped counterpart(s) of the document not required for filing purposes, together with the letter/fee receipt from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,

Allen H. Harrison, Jr.
Allen H. Harrison, Jr.
Attorney for Industrial Investment Corporation
for the purpose of this filing.

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423
Enclosures
BY HAND

8376-020

Letter to be sent to Mr. Williams



Interstate Commerce Commission
Washington, D.C. 20423-0001


Office Of The Secretary

Allen H. Harrison, Jr.
Donelan, Cleary Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC, 20005-3934

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6-7-95 at 9:10 AM, and assigned recordation number(s). 19451.

Sincerely yours,


Vernon A. Williams
Secretary

Enclosure(s)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature 

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RAILROAD EQUIPMENT LEASE
BY AND BETWEEN
INDUSTRIAL INVESTMENT CORPORATION, LESSOR
AND
RAILTEX SERVICE COMPANY, INC., LESSEE

RAILROAD EQUIPMENT LEASE,
INDUSTRIAL INVESTMENT CORPORATION, LESSOR
AND
RAILTEX SERVICE COMPANY, INC., LESSEE

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RAILROAD EQUIPMENT LEASE

This RAILROAD EQUIPMENT LEASE (Lease) is dated and effective as of June 1, 1995, between INDUSTRIAL INVESTMENT CORPORATION, an Ohio corporation (LESSOR) and RAILTEX SERVICE COMPANY, INC., a Texas corporation (LESSEE).

1. **Capitalization and Titles.** Capitalized words are used herein for the convenience of the parties. The specific definitions or uses of such words are contained in the body of the lease. All title to paragraphs are for the information and convenience of the parties and are not substantive.

2. **Cars.** LESSOR agrees to lease to LESSEE, and LESSEE agrees to lease from LESSOR, thirty-two (32) "seventy-ton" plug door boxcars with 15 inch end of car cushioning ("Cars"). A list of the Cars is attached as Schedule A.

3. **Term.** The term of this Lease is five (5) years, beginning June 1st, 1995.

4. **Transfer and Use.** LESSOR agrees to deliver the Cars to LESSEE, FOB Rail Tracks of Washington Railcar, Washington, Indiana. Upon termination of the Lease, LESSEE agrees to return the Cars to LESSOR to any destination on the lines of any of LESSEE's Short Line Railroads as designated in writing by LESSOR, at no cost to LESSOR.

5. **Rental.** LESSEE shall pay LESSOR a monthly Lease rental of \$9,600~~0~~.00 (\$300.00 per Car) in advance, for sixth (60) consecutive months, the first payment being due on or before June 1st, 1995.

6. **Maintenance and Repair.** The Cars are leased to LESSEE on a "net" basis. LESSEE shall, at its sole cost, maintain the Cars in interchange condition and in such condition and repair as the Cars were in at the outset of the Lease, ordinary wear and tear excepted.

7. **Inspection.** Each of the Cars were inspected by LESSEE, or its Agent, on May 3, 1995, and, by execution of this Lease, LESSEE also agrees that the Cars are in interchange condition. All Cars will be returned to LESSOR by LESSEE in the same condition as they were at the outset of the Lease, subject only to reasonable wear and tear.

8. **Car Hire Charges.** LESSEE shall collect and retain the car hire charges (time and mileage) earned by the Cars, subject to all applicable tariffs, circulars and contracts.

9. **Destruction of Car.** Any Car that is damaged or destroyed beyond economic repair will be deleted from this Lease as of the date of destruction. If the damage or destruction occurred while on LESSEE'S lines, LESSEE will pay LESSOR the amount due under the Casualty Schedule attached as Schedule B. If the damage or destruction occurred while on another railroad's lines, LESSEE, as Agent for LESSOR, will seek payment from that railroad

pursuant to AAR Interchange Rule 107. However, If payment is not received by LESSOR within two (21 months of the date of destruction from said third party railroad, LESSEE will pay LESSOR the amount due under the Casualty Schedule (Schedule BI. LESSEE, as Agent for LESSOR, will still pursue collection per Rule 107 from the responsible railroad and LESSEE will receive credit for payments that are received by LESSOR, up to the Casualty Schedule (Schedule B) amount.

10. **DISCLAIMER OF WARRANTIES.** LESSOR, NOT BEING THE MANUFACTURER OF THE CARS, NOR THE MANUFACTURER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. LESSOR HEREBY ACKNOWLEDGES THAT ANY MANUFACTURER'S AND/OR SELLER'S WARRANTIES ARE FOR THE BENEFIT OF BOTH LESSOR AND LESSEE.

11. **Default.** If LESSEE shall fail to perform any of its obligations hereunder, LESSOR shall provide written notice to LESSEE, specifying the alleged failure. If such failure has not been corrected within: (A) ten (10) days for payment of Rent or (B) forty-five (45) days for any other alleged failure, LESSOR, at its sole election, may terminate this Lease upon three (3) days written notice. Such termination will not relieve LESSEE of its obligation for the rental payment for such Cars nor relieve LESSOR of its obligation to mitigate any alleged damages resulting from such failure by LESSEE, including but not limited to all reasonable attempts to relet the Cars for the remaining term of this Lease.

12. **Assignment of Lease.** This Lease shall be assignable by LESSOR and by its assigns without the consent of LESSEE, but LESSEE shall not be obligated to any assignee of LESSOR except upon written notice of such assignment from LESSOR. Notwithstanding anything to the contrary contained herein, the obligation of LESSEE to pay Rental to such assignee shall be absolute and unconditional and shall not be affected by any circumstances whatsoever and such payment shall be made without interruption or abatement notwithstanding any event or circumstance whatsoever, including, without limitation, the bankruptcy or insolvency of LESSEE or any disaffirmance of this Lease by or on behalf of LESSEE, and notwithstanding any defense, setoff, recoupment or counterclaim or any other right whatsoever, whether by reason of breach of this Lease or otherwise which LESSEE may now or hereafter have against LESSOR and whether such event shall be by reason of any act or omission of LESSOR or otherwise (except as previously excluded in this paragraph); provided however, that nothing herein contained shall effect any right of LESSEE to enforce against LESSOR any claim which LESSEE may have against LESSOR in any manner other than by abatement, attachment, or recoupment or interference with, or setoff, counterclaim or defense against, the aforementioned payments to be made. LESSEE'S undertaking herein to pay the Rental to Lessor, or its assignee, and to perform the other obligations of LESSEE hereunder for the benefit of an assignee of LESSOR shall constitute a direct, independent and unconditional obligation of LESSEE to such assignee. LESSEE also acknowledges and agrees that any assignee of LESSOR'S interest in this Lease shall have the right to exercise all rights, privileges and remedies (either in its own name or in

the name of LESSOR) which by the terms of this Lease are permitted to be exercised by LESSOR.

13. **Lessee May Sublease Cars.** LESSEE may sublease the Cars, but LESSEE shall in all events remain primarily liable to LESSOR for performance of all provisions of this Lease, and any sublease entered into by LESSEE shall state that the sublessee shall be liable to both LESSEE and LESSOR under the terms of the sublease.

14. **Return Tender and Storage.** LESSEE shall gather the Cars at the end of the term of this Lease and shall notify LESSOR that the Cars are available for inspection. The aforementioned notice shall: (A) constitute the return tender of the Cars; and (B) begin the storage period after a reasonable period of time for LESSOR's inspection of the Cars. LESSEE shall provide free storage for the Cars for up to one hundred eighty (180) days from the date of return tender, after which a charge of \$1.00 per Car, per day shall apply until receipt of forwarding instructions from LESSOR. If LESSOR provides forwarding instructions to LESSEE at the end of the Lease and after a reasonable time for LESSOR's inspection of the Cars, the cost for movement of the Cars to LESSOR's designated destination shall be borne solely by LESSEE. However, in the event that LESSOR orders LESSEE to place the Cars in storage after LESSOR's inspection under the above provision for same, the cost for movement of the Cars to LESSOR's designated destination when the Cars leave storage shall be borne solely by LESSOR.

15. **Taxes.** LESSEE agrees to assume responsibility for and to pay any applicable sales, use or similar taxes resulting from the Lease or use of the Cars. LESSEE may protest or otherwise contest against the taxes for which it is responsible for payment to the taxing authority, and agrees to pay any penalty or interest, if unsuccessful. Notwithstanding any other provisions of this Lease, LESSOR is solely responsible for the payment of all income taxes assessed against it for any Rental payments or other income received or deductions taken by it in connection with this Lease.

16. **Title and Possession.** LESSOR represents (A) that it is either the sole owner of the Cars or has the sole right and authority to lease the Cars as provided herein, (B) that LESSEE is entitled to receive all car hire charges and/or mileage allowance payments that accrue when such Cars are off the lines of LESSEE and (C) no other party has any rights that might affect LESSEE'S rights to possession and peaceful enjoyment of the Cars under this Lease as long as LESSEE is in compliance with its obligations.

17. **Notices.** Unless otherwise provided, any notice sent pursuant to this Lease must be in writing sent by 1 st Class Mail or confirmed telefax and addressed as follows:

To LESSOR:	Industrial Investment Corporation
	P.O. Box 706
	Galion, Ohio 44833
	Fax No. (419) 299-3851

To LESSEE: RailTex Service Company, Inc
4040 Broadway, Suite 200
San Antonio, Texas 78209
Fax No. (210)841-7683

18. **Non-Waiver.** The failure of either party to enforce any provisions of this Lease or to prosecute any default shall not be considered as a waiver of that provision or as a bar to the prosecution of that default unless so indicated in writing.

19. **Insurance.** The LESSEE will at all times during the term of this Lease, and until return of the Cars to LESSOR, at its own expense, cause to be carried and maintained insurance in respect to its obligations assumed under this Lease in amounts and against such risks customarily insured against by comparable railroad or industrial companies. LESSEE will annually furnish LESSOR with a schedule of such coverage.

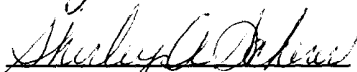
20. **UMLER.** LESSEE will be shown as the LESSEE of the Cars in the AAR UMLER file.

21. **Casualty Schedule.** The amounts contained in the attached Casualty Schedule will apply when LESSEE is responsible for the payment of a Car that is destroyed or damaged beyond economic repair, as described in Destruction of Car (Paragraph 9 above).

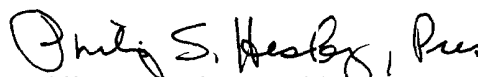
22. **Entire Understanding.** This Lease constitutes the entire understanding of the parties, shall be construed pursuant to the laws of the State of Ohio, and shall be binding upon the parties, their respective successors, assigns and legal representatives. It shall remain in full force and effect until all cars have been tendered at the appropriate interchange point for return to LESSOR. Any modification to this Lease must be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have caused duplicate originals of this Lease to be executed by their duly authorized officers.

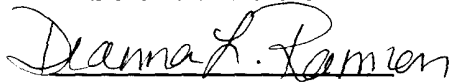

Witness as to Lessor


Witness as to Lessor

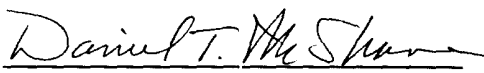
Industrial Investment Corporation, Lessor,


Philip S. Hesby, President


Witness as to Lessee


Witness as to Lessee

RailTex Service Company, Inc., Lessee,

By: 
Officer

State of OHIO

County of CRAWFORD ss.

The foregoing instrument was acknowledged before me this 26th day of May, 1995, by Philip S. Hesby, President of Industrial Investment Corporation, an Ohio Corporation, on behalf of the corporation.

Shirley A. Scherer
Notary Public

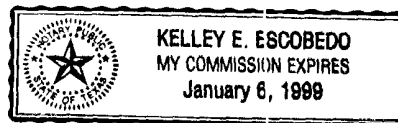
SHIRLEY A. SCHERER
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 10-20-99

State of Texas

County of Pekah ss.

The foregoing instrument was acknowledged before me this 19th day of May, 1995, by Daniel T. McShane, VP, Sales Business Develop. of RailTex Service Company, Inc., a Texas corporation, on behalf of the corporation.

Kelley E. Escobedo
Notary Public



SCHEDULE A.

TO LEASE BETWEEN

INDUSTRIAL INVESTMENT CORPORATION, LESSOR

AND

RAILTEX SERVICE COMPANY, INC., LESSEE

DATED AS OF ^{JUNE}~~MAY~~ 1ST, 1995

LIST OF CARS LEASED

32-50 Foot, 70-Ton Plug Door Boxcars with 15 inch end of car cushioning, with Marks and Numbers as follows:

OLD ALPHA	OLD CAR NUMBER	NEW ALPHA	NEW CAR NUMBER
S00	17514	SCRF	1700
S00	17526	SCRF	1701
S00	17544	SCRF	1702
S00	17554	SCRF	1703
S00	17566	SCRF	1704
S00	17602	SCRF	1705
S00	17624	SCRF	1706
S00	17656	SCRF	1707
S00	17660	SCRF	1708
S00	17666	SCRF	1709
S00	17672	SCRF	1710
S00	17680	SCRF	1711
S00	17692	SCRF	1712
S00	17698	SCRF	1713
S00	17718	SCRF	1714
S00	17724	SCRF	1715
S00	17768	SCRF	1716
S00	17774	SCRF	1717
S00	17792	SCRF	1718
S00	17802	SCRF	1719
S00	17806	SCRF	1720
S00	17810	SCRF	1721
S00	17826	SCRF	1722
S00	17838	SCRF	1723
S00	17854	SCRF	1724
S00	17872	SCRF	1725
S00	17876	SCRF	1726
S00	17880	SCRF	1727
S00	17882	SCRF	1728
S00	17886	SCRF	1729
S00	17890	SCRF	1730
S00	17894	SCRF	1731

SCHEDULE B
TO LEASE BETWEEN
INDUSTRIAL INVESTMENT CORPORATION, LESSOR
AND

RAILTEX SERVICE COMPANY, INC., LESSEE

DATED AS OF JUNE 1ST, 1995

CASUALTY SCHEDULE

	<u>Casualty Value</u> (Per Car)
For period June <u>1ST</u> , 1995 through June <u>1ST</u> , 1996	\$18,000.00
For period June <u>1ST</u> , 1996 through June <u>1ST</u> , 1997	\$17,000.00
For period June <u>1ST</u> , 1997 through June <u>1ST</u> , 1998	\$16,000.00
For period June <u>1ST</u> , 1998 through June <u>1ST</u> , 1999	\$15,000.00
For period June <u>1ST</u> , 1999 through June <u>1ST</u> , 2000	\$14,000.00
and thereafter	\$14,000.00